CF0000060405

49 (2)

CrA 1766/96

/- APPEAL OF PRISONER -/

No. 467 Name चितु हल्बा

Father's Name सोनसाय Resident ग्राम- रामपुरम थाना- दादीरास

Age 40 Sentenced to आजीवन कारावास on

Under Section 302 भा. द. वि. by III अति. सत्र न्यायाधीश जगदलपुर

S.T.No. 8/95

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- NO.
2. Date of which copy received :- 8.7.95
3. Date on which appeal sent :- 23.7.95
4. Whether the prisoner wished to be represented or not. Yes/No

No. 467 Name चितु हल्बा पिता सोनसाय

Continued in जिला Jail जगदलपुर छत्तर

No. 363 /octagon./96 Dated 23/7/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appllate Court.

Superintendent Central/Distt/Sub-Jail.

Date of receipt in C.J.M's Office.

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

(13)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A 1766/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -J.-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1766 of 1996

Appellant : Chitu

Vs.

Respondent : State of Madhya Pradesh

CRIMINAL APPEAL NO. 1767 of 1996

Appellant : Chamrin

Vs.

Respondent : State of Madhya Pradesh

Shri R.K.Jain & Smt. Kiran Jain, learned counsel for the appellants.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Ravindra Agrawal, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(17.02.2006)

L.C.Bhadoo, J

The accused/appellant Chitu has filed Cr. A. No. 1766/96 through Superintendent, Central Jail, Jagdalpur and accused/appellant Chamrin has filed Cr. A. No. 1767/96 through Superintendent, Central Jail. Jagdalpur as both the appeals are arising out of the same incident and common judgment passed by learned Third Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.08/95 therefore, they are being disposed of by this common judgment.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
2.	The accused/appellants have preferred these appeals under Section 374(2) of the Criminal Procedure Code questioning the legality and correctness of the judgment of conviction and order of sentence dated 08.07.96 passed by learned Third Additional Sessions Judge, Bastar at Jagdalpur in S.T. No. 08/95 whereby the learned Session Judge after holding the accused/appellants guilty for commission of murder of one Chamru convicted them under Section 302/34 of the Indian Penal Code and sentenced each of the accused/appellants to undergo imprisonment for life. However the co-accused persons namely Bali & Chander had been acquitted.	
3.	The brief facts of the prosecution case are that Merg intimation P-7 was given by Balbir, son of the deceased and based on the merg intimation the First Information Report P-5 was registered in the police station Gaadiraas on 22.09.94 at about 7.00 p.m. to the effect that he is the resident of village Ramapuram and is residing along with his parents. Eleven days prior thereto at about 12.00 noon, accused Chitu came to their house and started quarrelling with his father Chamru saying that as he is practicing witchcraft as a result of which his children and wife fell ill and he left the house. On 21.09.94 (Wednesday) at noon i.e. a day before lodging the report, after taking meals, he left for grazing the cattle, when he heard the screams of his mother calling him and he saw that Chitu, Chander, Bali & Chamrin were fleeing away. Immediately he rushed towards the house and saw that his father was lying on the ground and blood was oozing from the injuries on the head and neck. His mother disclosed that accused/appellants Chander, Bali & Chamrin had caught hold of Chamru, whereas Chitu assaulted with *Gaagda* (a sharp edged iron instrument for	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cutting) on the neck and has murdered Chamru. Receiving this report, Shri A.K.Pandey, Assistant Sub Inspector of Police Station Gaadiraas registered the crime under Section 302/34 of the IPC and left for the scene of occurrence. The Investigating Officer after giving notice P-8 to the panchas prepared panchnama P-9 of the dead body of Chamru. Site plan P-10 of the place of occurrence was prepared. Blood stained soil and plain soil were taken into possession under P-11. Dead body of Chamru was sent for post mortem examination to the Primary Health Centre, Gaadiraas under P-12 where Dr. Akhileshwar Uraon conducted the post mortem on the body of Chamru and prepared post mortem P-1. While in police custody the accused/appellant Chitu gave memorandum P-13 regarding the weapon of offence and in pursuance of that, *Gaagda*, one knife and a white dhoti were taken into possession under P-14. The seized articles were sent for chemical examination to the Forensic Science Laboratory. After completion of the investigation, charge sheet against the accused/appellants namely Chitu, Chamrin, Bali and Chander was filed in the Court of Judicial Magistrate First Class, Sukma who in turn committed the case to the Sessions Judge, Jagdalpur from where the learned Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

4. The prosecution in order to establish charge against the accused/appellants examined as many as five witnesses. Statement of the accused persons were also recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them and stated that they have been falsely implicated in the crime.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
5.	After hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellants, learned Additional Sessions Judge convicted and sentenced the appellants as mentioned in paragraph two of the judgment. However the accused/appellants namely Bali & Chander were acquitted.	
6.	We have heard Shri R.K.Jain & Smt. Kiran Jain, learned counsel for the accused/appellants and Shri U.N.S.Deo, learned Addl. Public Prosecutor with Shri Ravindra Agrawal, P.L. on behalf of the State.	
7.	Homicidal death of Chamru is not in dispute.	
8.	As far as the involvement of the accused/appellants in the crime in question is concerned, P.W.-2 Ramvati, wife of the deceased has stated that one year prior to the date of her evidence, accused/appellants Chitu, Chamrin, Bali & Chander came to her house when she and her husband were sleeping. Accused Bali & Chander were standing at the gate while Chitu & Chamrin entered the house. Chamrin caught hold of her husband and Chitu assaulted Chamru with *Gaagda* on his neck as a result of which his neck was cut. When she was going to intervene, they asked her not to come otherwise they will kill her also upon which she called her son Balbir and Panchayat was convened and in the Panchayat the accused persons admitted their crime and stated that deceased Chamru was practicing witchcraft. P.W.-3 Balbir has corroborated the above evidence and has stated that on hearing the screams of his mother he came towards the house and saw that Chitu & Chamrin were fleeing away from his house. He went and lodged the merg intimation P-5 in the police station. P.W.5,	

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Investigating Officer, Shri A.K.Pandey has stated that he registered the FIR and during the investigation the accused/appellant Chitu gave memorandum P-13 and in pursuance of that he got recovered *Gaagda*, the weapon of offence and knife P-14. The evidence of P.W.-2 Ramvati stands corroborated by the medical evidence of P.W.-1, Dr. Akhileshwar Uraon who had stated that he conducted the post mortem and found that there was incised wound in the size of 5cm. x 3 cm. x 2.5 cm. on the right side of the neck, another incised wound in the size of 6.5cm. x 2.5 cm. x 1.5 cm. below the ear, incised wound in the size of 2.5 cm. x1 cm. x 2cm. on the left side of the neck and incised wound in the size of 3cm. x 1.8cm. x 1cm. vertically on the occipital region. The injuries were anti mortem in nature and were a result of sharp cutting object. The carotid artillery and internal jugular vein were also found cut therefore in view of the above, involvement of the accused/appellants in the crime in question is established and there is nothing in the cross-examination of the above witnesses to make the evidence of these witnesses unreliable or untrustworthy.	
9.	Learned counsel for the accused/appellants argued that as far as the accused/appellant Chamrin is concerned, there is no allegation against her that she in any way assaulted the deceased. The only allegation against her is that she caught hold of the deceased Chamru and accused/appellant Chitu assaulted with the *Gaagda.*	
10.	On the other hand learned Additional Public Prosecutor supported the judgment of the trial Court.	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11. As far as the case of the accused/appellant Chitu is concerned, from the above evidence it is established that he was the author of the injuries on the body of the deceased and he inflicted these injuries on the vital part with a sharp edged weapon as a result of which deceased Chamru died spontaneously. Now coming to the case against the accused/appellant Chamrin, the only allegation against her is that she caught hold of deceased Chamru and there is no allegation that in any way she asked Chitu to assault with *Gaagda* in order to commit his murder or there is no other evidence to show that in any way she was sharing intention with the accused Chitu for causing the death of Chamru. Even though P.W.-2 Ramvati wife of the deceased has stated that when she tried to intervene, accused/appellants Chitu and Chamrin asked her not to come near otherwise they will murder her but this is the improvement in the Court evidence. In her diary statement D-1 she has not stated that Chamrin in any way threatened her that they will commit her murder also therefore this part of the evidence cannot be believed. In the cross examination, in paragraph 4 & 5 she has stated that Chamrin assaulted her husband with the *Gaagda* but in the examination in chief she has not stated like that nor in the case diary D-1 she has stated so therefore this part of her evidence can not be believed. The involvement of the accused Chamrin in the crime in question is proved to the extent that she caught hold of deceased Chamru and accused Chitu was carrying the weapon *Gaagai* with him that was visible and accused/appellant Chamrin was aware of that fact that Chitu is carrying that weapon and when she caught hold of the deceased, the accused Chitu assaulted with *Gaagda*, at the most it can be attributed to Chamrin that when she caught hold of Chamru, she had knowledge that Chitu is likely to assault Chamru with *Gaagda* and thereby she can be

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 7 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

attributed the knowledge that Chitu was likely to assault Chamru with *Gaagda* and thereby he may be likely to cause death. Therefore, the offence against accused/appellant Chamrin does not travel beyond 304-II of the IPC.

12. In the result the appeal of the accused/appellant Chitu is devoid of merits and the same is liable to be dismissed and it is hereby dismissed.

13. As far as the appeal preferred by accused/appellant Chamrin is concerned, it partly succeeds. The judgment of conviction and sentence passed against the accused/appellant by the trial Court are set aside as such she is acquitted of the charges under Section 302/34 of the IPC and instead of thereby she is convicted under Section 304-II of the IPC and sentenced to undergo imprisonment for ten years. It is stated that the accused/appellant Chamrin is in custody since 29.09.94 and thereby she has already undergone more than ten years of imprisonment which is not disputed by the Additional Public Prosecutor. The accused/appellant be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge